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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

029714-00054

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Signature _____

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name _____

Application Number

10/690,653

Filed

October 21, 2003

First Named Inventor

Shiping WANG et al.

Art Unit

1794

Examiner

Kevin M. BERNATZ

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

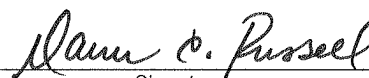
I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 44,751
☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Dawn C. Russell

Typed or printed name

202-857-6000

Telephone number

August 5, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:	Confirmation No.: 5864
Shiping WANG et al.	Art Unit: 1794
Application No.: 10/690,653	Examiner: Kevin M. Bernatz
Filed: October 21, 2003	Attorney Dkt. No.: 029714-00054
For: COATING COMPOSITION FOR SKIN-CONTACTING SURFACE OF ELASTOMERIC ARTICLES AND ARTICLES CONTAINING THE SAME	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Date: August 5, 2009

Sir:

In response to the Final Office Action mailed May 5, 2009, Applicant respectfully submits that the Office Action is both factually and legally incorrect, and hereby submits this Pre-Appeal Brief Request for Review. This request is not accompanied by an amendment to the currently pending claims, and is being filed with a Notice of Appeal.

Claims 18-36 are pending in the subject application, with claims 18, 34, and 35 being independent. The outstanding Office Action is the fifth Office Action in this application. This application qualifies for Appeal.

I. Obviousness-Type Double-Patenting Rejections

Claims 18-24, 26, 27, 29-31, and 33-36 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 16-32 of copending Application No. 10/882,580. Claims 25, 28, and 32 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 16-32 of copending Application No. 10/882,580, further in view of Mansouri (U.S. Patent App. No. 2001/0006680). Because these are

provisional obviousness-type double patenting rejections, Applicants have requested that these rejections be held in abeyance until there is an indication of allowable subject matter in one of these two pending applications, and such an abeyance has been granted.

II. Essential Elements are Not Disclosed by the Cited References

Claims 18-29 and 31-35 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chou '582 (U.S. Patent No. 6,953,582) in view of Mansouri and Hahn et al. and/or Murray et al., and further in view of Applicants' admissions. Claims 30 and 36 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Chou '582 in view of Mansouri and Hahn et al. and/or Murray et al., and further in view of Soerens et al. Applicant respectfully traverses the outstanding rejections, and submits that they were made in error for at least the reasons set forth below.

The outstanding Office Action cites references that do not disclose or suggest all of the claimed features.

Applicant respectfully submits that none of the cited references disclose or suggest an elastomeric article including an elastomeric layer having a skin-contacting elastomeric surface and **a coating composition provided directly on substantially the entire skin-contacting elastomeric surface of said elastomeric layer**. The coating composition is in a dry state and **comprises at least one polyhydric alcohol moisturizer and at least one alphahydroxy lactone**. The composition is water-soluble and hydratable upon contact with skin. Support for these elastomeric articles may be found in Applicant's specification.

Chou '582 discloses elastomeric gloves having a coating formed from an aloe vera solution that is dried on their inner surfaces. The coating is said to condition and soothe the hands, and prevent growth of microorganisms. Although Chou '582 generically discloses that other skin-moisturizing or skin-conditioning ingredients may be included in the coating, absolutely no guidance regarding how to incorporate any other ingredients into the coating is provided.

Mansouri discloses skin care moisturizers and cleansers that may include absorption enhancers (hydroxyapatite), antimicrobial function enhancers, bound lipid removers, humectants, emollients, and extracts of botanical herbs. Mansouri discloses adding one or more polyhydric alcohols, specifically pantothenol, sorbitol, and/or glycerin, to a coating composition as a humectant, emollient, anti-inflammatory agent, etc. The skin care moisturizers and cleansers are designed to be compatible with latex glove use. However, Mansouri fails to disclose or suggest at least one alphahydroxy lactone, or that the dry composition is applied directly to substantially the entire skin-contacting elastomeric surface of an elastomeric article.

Hahn et al. and Murray et al. are relied upon for disclosing an alphahydroxy lactone, specifically, gluconolactone.

Hahn et al. discloses a wide variety of topical formulations having varying forms, where the only unifying feature of the topical formulations is the fact that they all include divalent strontium cations to prevent irritation that might be caused by any of a number of potential irritants. Topical vehicles for use in cosmetics are discussed in paragraph [0052], and methodologies for preparing creams, lotions, and other products are referenced in paragraph [0054]. Gluconolactone, an alphahydroxy lactone, is described as one potential irritant. There is absolutely no guidance regarding how to incorporate any of the numerous cosmetic ingredients listed in Hahn et al. into a water soluble, hydratable coating composition that is dried onto substantially the entire skin-contacting elastomeric surface of an elastomeric article.

Murray et al. discloses hydrogels, which are broadly defined as water-insoluble polymers that are capable of absorbing a large amount of water, and more precisely as a system comprising a three-dimensional network of water-plasticized polymer and liquid (or free) water filling the space between the polymer chains. Absorbent hydrogels, such as the acrylic polymers disclosed in Murray et al., are primarily used to immobilize and/or store water. The hydrogels of Murray et al. are water insoluble, and form films over a wound to provide a barrier against microorganisms. Murray et al. describes testing the

hydrogels by applying them to a hand and then covering the hand with an elastomeric glove until beads of water form within the glove for the "Occlusive Glove Test" (see column 12 and Examples 2 and 25). Accordingly, one skilled in the art would not look to the hydrogels disclosed in Murray et al. in order to form the water-soluble coating compositions of the presently-claimed invention. Further, Applicants submit that the fact that gluconolactone, glycerol, and sorbitol are disclosed as potential plasticizers for the hydrogel polymers of Murray et al. (see col. 6, lines 3-9) would not motivate one skilled in the art to use these ingredients as components of a water-soluble coating composition that is dried onto substantially the entire skin-contacting elastomeric surface of an elastomeric article.

Accordingly, one skilled in the art would not interpret Hahn et al. or Murray et al. as disclosing that alphahydroxy lactones could be used in a coated elastomeric article.

Further, one skilled in the art would not be motivated to include alphahydroxy lactones in the skin-soothing or skin-moisturizing coating composition of Chou '582. The coating compositions of Chou '582 comprise aloe vera, and "alternatively or additionally ... **any other skin-soothing or skin-moisturizing substance or mixture** that can be dried onto the inside of a glove and that, in the dry form, is mixed with moisture that consists only of perspiration from a hand during wearing of the glove and **moisturizes** the hand." (See col. 8, lines 24-34.) Alphahydroxy lactones are not skin-soothing or skin-moisturizing substances. They are exfoliants and are considered irritants by Hahn et al., and used as plasticizers in Murray et al. Accordingly, there is no motivation to combine Chou '582, Hahn et al., and Murray et al. in the manner set forth in the Office Action.

Soerens et al. is cited for disclosing adding chitosan, which exhibits antimicrobial properties, to an inner layer of an exudate-absorbing pad provided in an adhesive bandage, where the chitosan is not in direct contact with the wound and cannot form a film on the skin or provide prolonged skin surface moisturization. Soerens et al. does not provide any guidance regarding how to select and incorporate ingredients into a water-soluble, hydratable coating composition that is dried onto substantially the entire skin-

contacting elastomeric surface of an elastomeric article. These references therefore fail to remedy the deficiencies of the combination of Chou '582, Mansouri, Hahn et al., and Murray et al. with respect to the compositions of claims 33-40.

Accordingly, Applicants submit that claims 18-36 are patentable over the combination of Chou '582, Mansouri, Hahn et al., Murray et al., and Soerens et al, and respectfully request that these rejections be withdrawn.

III. Conclusion

For all of the above reasons, a favorable decision and allowance of all pending claims are earnestly solicited.

In the event this paper is not considered to be timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, **referencing Attorney Dkt. No. 029714.00054.**

Respectfully submitted,



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Enclosures: Notice of Appeal (Form PTO/SB/31)
Pre-Appeal Brief Request for Review (Form PTO/SB/33)